



California  
Fair Political  
Practices Commission

**SUPERSEDED  
IN PART**

October 5, 1988

ky-94-045

Mary Jo Levinger  
Town Attorney  
Town of Los Gatos  
P.O. Box 949  
Los Gatos, CA 95031

Re: Your Request For Informal  
Assistance  
Our File No. I-88-328

Dear Ms. Levinger:

You have requested advice on behalf of John R. Lien about application of conflict of interest provisions of the Political Reform Act (the "Act")<sup>1/</sup> to his duties on the Planning Commission of the Town of Los Gatos. In this letter we do not comment on past conduct. We are providing informal assistance about future decisions only.<sup>2/</sup>

QUESTIONS

Mr. Lien is an architect and has prepared architectural drawings for two projects in which he has economic interests.

1. May Mr. Lien answer questions at a planning commission meeting about a project which he owns, or for which he has prepared architectural drawings for a client, or both?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3), copy enclosed.)

2. May Mr. Lien answer questions at a town council meeting about a project which he owns, or for which he has prepared architectural drawings for a client, or both?

3. May Mr. Lien answer questions at a meeting of the development review committee about a project which he owns, or for which he has prepared architectural drawings for a client, or both? The development review committee consists of staff from various town departments who review and make recommendations about applications submitted to the planning commission.

4. May Mr. Lien ghostwrite materials to be submitted to the planning commission or town council by the developer of the project in which Mr. Lien has an economic interest?

#### CONCLUSIONS

1. In general, Mr. Lien may not answer questions from planning commissioners about a project in which he has an economic interest. Mr. Lien may respond to questions from town staff, outside of the actual planning commission meeting, about the processing or evaluation of architectural drawings or similar submissions he has prepared for the project.

However, if Mr. Lien wholly owns a development project, he may appear before the planning commission in the same manner as any other member of the general public to represent his personal interest in the project. Mr. Lien also may answer questions from staff about the processing or evaluation of submissions he has prepared.

2. Mr. Lien may appear before the town council and answer questions about a development project in which he has any type of investment interest or for which he has prepared architectural drawings for a source of income or both. However, he may not represent or purport to represent the planning commission before the town council. This prohibition includes using planning commission stationery to communicate with the town council.

3. Mr. Lien may answer questions from town staff, including members of the development review committee, about the processing and evaluation of architectural drawings or similar submissions he has prepared for a project. This conclusion is the same whether Mr. Lien is the sole owner of the project or is representing a client.

4. Because Mr. Lien is prohibited from attempting to influence a decision regarding an economic interest, he may not ghostwrite materials for a client to submit to the planning commission or development review committee, except for architectural drawings or submissions of a similar nature. Mr. Lien, however, may ghostwrite materials to be submitted to the town council.

#### FACTS

Mr. Lien is a planning commissioner for the Town of Los Gatos. He also is an architect.

As part of his work as an architect, Mr. Lien prepares architectural drawings for clients who apply to the Town of Los Gatos for permits to build development projects. Mr. Lien may become sole owner of a project for which he has prepared architectural drawings that are submitted to the planning commission. He also may own a small percentage of another project whose owner has paid Mr. Lien \$250 within 12 months of a decision and for whom Mr. Lien has prepared architectural drawings submitted to the planning commission.

The development review committee reviews and makes recommendations on plans and applications submitted to the planning commission. This committee is made up of staff from various town departments. The planning commission has no budgetary control over the committee nor does the planning commission appoint committee members.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the official has a financial interest. An official has a financial interest in a decision that will have a foreseeable and material financial effect on the official or immediate family or on the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Regulation 87103.

The Commission has concluded that a decision concerning actual or permitted use of real property in which an official has an interest will have a material financial effect on that property. (Regulation 18702.1(a), copy enclosed.) Therefore, Mr. Lien is disqualified from participating in a decision before the planning commission concerning a development project that he wholly owns.

Where a project owner pays Mr. Lien \$250 or more, or Mr. Lien has an investment interest in the project, Mr. Lien also is disqualified from a decision before the planning commission about that project. (See Regulation 18702.1(a).)

You have inquired about restrictions on Mr. Lien's ability to answer questions from the planning commission, town council and development review committee about development projects that Mr. Lien owns or in which he otherwise has an economic interest.

Projects Before the Planning Commission

Wholly Owned Project

Section 87100 prohibits Mr. Lien from using his official position to influence a decision in which he has a financial interest. Regulation 18700.1(a) (copy enclosed) describes the prohibited conduct of "using [an] official position to influence a decision," as follows:

18700.1. (a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the

agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

(b) Notwithstanding subsection (a) an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by subsection (a) if the official:

(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family...

(4) Prepares drawings or submissions of an architectural, engineering or similar nature to be used by a client in connection with a proceeding before any agency. However, this provision applies only if the official has no other direct oral or written contact with the agency with regard to the client's proceeding before the agency except for necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions prepared by the official...

(c) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

Pursuant to subdivision (a), Mr. Lien's appearance before the planning commission would be an improper attempt to use his official position to influence a decision before the planning commission. Normally Mr. Lien is prohibited from appearing before the planning commission regarding a project in which he has an investment interest or which is owned by a source of income to him.

Regulation 18700.1(b)(1)(A), however, creates an exception to subdivision (a). Subdivision (b)(1)(A) allows an official to appear before an agency to represent his or her personal interest in real property the official wholly owns. Consequently, in accord with subdivision (b)(1)(A), if Mr. Lien owns 100 percent of a project, he may appear before the planning commission in the same manner as any member of the general public solely to represent his interest in the project. This means Mr. Lien must follow required procedures for members of the public to appear before the planning commission.

Subdivision (b)(4) of Regulation 18700.1 also applies to Mr. Lien's involvement with a development project. This subdivision normally is used for a member of an agency who prepares architectural drawings for a client who owns a project before the agency. That public official may make necessary contact with agency staff about the processing or evaluation of the drawings or similar submissions.

For the unusual situation where Mr. Lien has prepared architectural drawings for a project he wholly owns, we will read subdivisions (b)(1)(A) and (b)(4) together, because for purposes of subdivision (b)(4) the official, Mr. Lien, also is the client. Therefore, Mr. Lien may appear before the planning commission and make necessary contact with staff about processing or evaluating architectural drawings or submissions of a similar nature.

#### Project Owned by Source of Income

Mr. Lien may not appear before the planning commission regarding a project owned by a client who has promised or paid Mr. Lien \$250 within 12 months before a decision. (Regulation 18700.1(a).) Furthermore, he is prohibited from answering questions from the planning commission about the architectural drawings he has prepared for a client's project.

Nevertheless, Mr. Lien may answer questions from town staff in order to process or evaluate architectural drawings or similar submissions he has prepared for a project owned by a client. (Regulation 18700.1(b)(4).)

#### Projects Before the Town Council

The town council is not under the budgetary or appointive control of the planning commission. Therefore, Mr. Lien may appear before the town council regardless of the extent of Mr. Lien's economic interest in the subject of the decision before

the town council. (Regulation 18700.1(c).) For example, before the town council Mr. Lien may represent his own interest in a project he wholly owns or his client's interest in a project owned by the client. He also may speak with town council staff about the processing and evaluation of his architectural drawings and similar submissions.

Regulation 18700.1(c) however, prohibits Mr. Lien from purporting to represent the planning commission before the town council regarding a decision in which Mr. Lien has an economic interest. This prohibition includes using planning commission stationery. We suggest that Mr. Lien expressly inform the town council that he is appearing in his individual capacity, and not as a member of the planning commission.

#### Projects Before Development Review Committee

As mentioned before, Regulation 18700.1 prohibits Mr. Lien from using his official position to influence any member, officer, employee or consultant of the planning commission. An attempt to influence includes appearing before or contacting the planning commission or town staff on behalf of a business entity, client or customer. (Regulation 18700.1(a).)

The development review committee reviews plans and applications submitted to the planning commission. The committee consists of staff from various town departments. Because the committee consists of town staff who make recommendations to the planning commission, the committee is "agency staff" for purposes of Regulation 18700.1.

Therefore, if Mr. Lien is the sole owner of a project, he may make a presentation to the development review committee and may answer committee questions about his drawings. (Regulation 18700.1(b)(1)(A) and (b)(4).)

If Mr. Lien prepares architectural drawings or similar documents for a client to submit to the planning commission, Mr. Lien may respond to questions from the development review committee about the processing or evaluation of the drawings he prepared for his client. In this situation, where Mr. Lien is not the sole owner of the project, he may appear before the development review committee only to answer questions, but may not otherwise present the client's project to the committee.

#### Ghostwriting

You asked whether Mr. Lien could prepare written material that would be signed and submitted to the city by a developer.

Mary Jo Levinger  
October 5, 1988  
Page -8-

As mentioned before, Section 87100 prohibits Mr. Lien from attempting to use his official position in any way to influence a governmental decision in which he has a financial interest. Regulation 18700.1(b)(4) expressly exempts architectural drawings or submissions of a similar nature from the definition of attempting to influence a decision before an official's agency. Nevertheless, preparation of nontechnical documents or other materials not contemplated by subdivision (b)(4) would not fall under this exception.

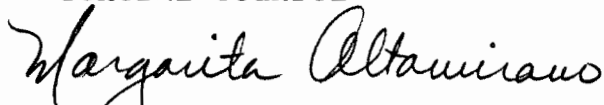
For example, Mr. Lien may not prepare a written description or explanation of the project, which the developer then would submit under his or her own name to the planning commission or the development review committee.

The town council, however, is not an agency subject to the prohibition of Regulation 18700.1(a). Therefore, Mr. Lien may ghostwrite any type of material to be submitted to the town council. Mr. Lien, however, may not use his official planning commission stationery for submission of ghostwritten material to the town council. (Regulation 18700.1(c).)

I hope this letter satisfactorily answers your questions. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:aa

Enclosures



STATE CAPITOL  
SACRAMENTO, CALIFORNIA 95814  
(916) 445-7448

1501 NO. HARBOR BOULEVARD, SUITE 201  
FULLERTON, CALIFORNIA 92635  
(714) 738-5853



ASSEMBLYMAN ROSS JOHNSON  
CALIFORNIA LEGISLATURE

TELEFAX TRANSMITTAL SHEET

SENT FROM:

☒ CAPITOL OFFICE  
(916) 445-7448 (phone)

☐ DISTRICT OFFICE  
(714) 738-5853 (phone)

TO:

Scott Hawabrin

FROM:

Susie Swatt

Total Number of Pages  
Including Cover Sheet: 8

Subject/Comments: \_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

Please call to confirm receipt: ☐ Yes ☐ No

QUENTIN L. KOPP  
THOMAS M. DIFRANCO

KOPP & DIFRANCO  
ATTORNEYS AT LAW  
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SAN FRANCISCO, CALIFORNIA 94111  
(415) 381-0245

10807 W. PICO BOULEVARD  
SUITE 200  
LOS ANGELES, CA 90064  
(310) 470-8882  
PLEASE REPLY TO SAN FRANCISCO

March 29, 1994

**VIA HAND DELIVERY**

Honorable Malcolm M. Lucas  
Chief Justice  
California Supreme Court  
303 Second Street, South Tower  
San Francisco, CA 94107

Re: *Quentin L. Kopp and Ross Johnson v. Fair Political Practices Commission*, No. SO38571; specifically Joseph Remcho Letter of March 21, 1994

Dear Chief Justice Lucas and the Honorable Associate Justices:

We are the petitioners in the above titled matter, and we write to comment on the correspondence of March 21, 1994 by Joseph Remcho directed to this Court.

**I. Introduction**

The Majority Leaders of the California State Legislature (hereinafter "Majority Leaders"), as well as the plaintiffs in *Service Employees International Union, et al. v. Fair Political Practices Commission* (9th Cir. 1992) 955 F.2d 1312, cert. denied, \_\_ U.S. \_\_ (1992) 112 S.Ct. 3056 urge denial of our petition for writ of mandate.<sup>1</sup> They argue that this Court must refrain from reviewing the petition because first, Senator Lockyer has introduced legislation which *might* render moot the remedy sought by the petitioners; and second, that the highest Court of this state is precluded from reviewing a federal court's interpretation of California state law under the principles of *res judicata*.

As will be pointed out below, the Majority Leaders have offered no genuine indicia that the will of the voters who enacted Proposition 73 will be effectuated or protected by the State Legislature. Further, the remedy sought before this Court is founded in precedent and merely requests the Court to exercise an essential function of California's highest

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<sup>1</sup> Senator Lockyer was not, to our knowledge, a party to the federal litigation challenging Proposition 73's fiscal year contribution limits. A political committee of then-President Pro Tempore David Roberti, Friends of David Roberti, appeared as a party plaintiff along with Assembly Speaker Willie L. Brown, Jr. and the Willie L. Brown Campaign Committee.

California Supreme Court  
March 29, 1994

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tribunal, namely, to interpret state law in order to avoid federal constitutional infirmity. The claims of the Majority Leaders are without merit and should be dismissed.

**II. The Pending Legislation Is Inconsistent With Proposition 73 And Does Not Preclude This Court From Assuming Jurisdiction Over This Matter.**

The Majority Leaders proclaim that review of our petition is unwarranted because "Senator Lockyer has pending campaign finance reform legislation that does not carry the constitutional infirmity that brought Proposition 73 down and is more reflective of current voter sentiment than a measure drafted more than seven years ago." Letter of March 21, 1994 at 1. That legislation is assumed to be Senate Bill 588 (Lockyer), the "Campaign Financing Reform Act of 1993," introduced by Senator Lockyer almost one year ago. That bill (attached hereto) would amend the Political Reform Act to provide contribution limits for certain time periods and for certain election cycles.<sup>2</sup>

The legislation deemed by the Majority Leaders to be "more reflective of current voter sentiment" would enact *public financing of political campaigns*. Less than two years ago, in *Gerken v. FPPC* (1993) 6 Cal.4th 707, the very parties now championing this legislative panacea stoutly defended Proposition 73 as representing the will of California's electorate:

Much has happened since the 1988 general election. ... We have just concluded a budget impasse that is the longest in California's history, an impasse caused by vast differences of opinion on how scarce financial resources should be used.

After all this, [petitioner] would have this Court say that the voters' 1988 rejection of public funding and prohibition of the use of the frank did not in fact truly reflect a desire to prohibit such expenditures. *And it would have this Court say so at a time when the notion that California's populace is prepared to spend a dime to finance the activities of political figures cannot*

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<sup>2</sup>Section 13007 of the bill defines an "election cycle" as "that period of time from the day after an election is held where an individual is elected to fill an elective office until the day of the next election where an individual is elected to fill that same office." (SB 588 6:2-6) Candidates for the State Legislature would be prohibited, for example, from accepting contributions in excess of \$2,000 from any person from January 1 of an odd-numbered year until June 30 of an even-numbered year, and then from July 1 of an even-numbered year until December 31 of an even-numbered year. (SB 588 9:7-21)

The bill would not take effect unless Senate Constitutional Amendment 14 (Marks) is submitted to, and approved by, the voters (also attached hereto). That measure would specifically embody the public financing of political campaigns into the California Constitution. It has already been rejected (on January 24, 1994) by the Senate and has, since February 18, 1994, been on the Senate inactive file by request of its author.



**TOWN of LOS GATOS**  
*Office of the Town Attorney*  
(408) 354-6880

August 19, 1988

Ms. Kathryn Donovan  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Donovan:

I am writing to request a written confirmation of some of the matters that we discussed in our telephone conversation on August 17, 1988. I have also included some relevant questions on related subjects. The following is a brief statement of the facts that prompted my questions to you.

FACTS

John R. Lien is a Planning Commissioner for the Town of Los Gatos. His residence is 196 College Avenue, Los Gatos, California, 95032. He has authorized me to seek an advice letter on his behalf concerning the conflict of interest questions presented herein.

His position as Planning Commissioner is appointed by the Town Council. He is a licensed architect and has prepared architectural drawings for the following two projects:

1. 400 Bella Vista is a residential project scheduled for architecture and site review before the Planning Commission on September 14, 1988. At the time the application for approval will be heard by the Planning Commission, he will have a 100% interest in the property.
2. 246-248 University Avenue is a residential project for which architecture and site approval was obtained from the Planning Commission and which is on appeal to the Town Council scheduled for public hearing on September 19, 1988. Mr. Lien has a one per cent (1%) financial interest in the project and has received more than \$250 from the owner/developer T-MAC within the last twelve (12) months.

Ms. Kathryn Donovan  
August 19, 1988  
Page 2

The Town of Los Gatos has a Development Review Committee which is a staff committee whose meeting is open to the public. The committee reviews plans and submittals of applications seeking Planning Commission approval and makes recommendations to the Planning Commission.

Concerning Mr. Lien's practice involving development projects before the Planning Commission, please note that although in the specific factual instance presented Mr. Lien will be the sole owner of the project at the time of the next scheduled Planning Commission hearing on the application, advice is still requested on the facts without sole ownership to provide guidance for his future conduct.

I am requesting an advice letter from you that summarizes the remarks that you made on the following subjects:

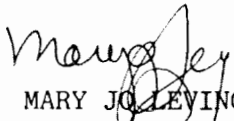
1. Whether a Planning Commissioner who has a financial interest in a development project that is being considered for approval by the Planning Commission may answer questions about the project at a public meeting of the Planning Commission.
2. Whether a Planning Commissioner who has a financial interest in a development project may answer questions at a public meeting of the Planning Commission when the questions concern processing or evaluation of architectural drawings that the Commissioner has prepared for the project.
3. Whether a Planning Commissioner who has a financial interest in a development project may answer questions about the project at a public meeting of the Town Council.
4. Whether a Planning Commissioner who has a financial interest in a development project may answer questions about the project at a public meeting of the Town Council when the questions concern processing or evaluation of architectural drawings that the Commissioner has prepared for the project.
5. Whether a Planning Commissioner who has a financial interest in a development project may "ghostwrite" materials that are subsequently submitted by a developer for consideration by the Planning Commission. (Ghostwriting involves preparation of written material by the Planning Commissioner which is merely signed and submitted by the developer.)
6. Whether a Planning Commissioner who has a financial interest in a development project may "ghostwrite" materials that are subsequently submitted by a developer for consideration by the Town Council. (Ghostwriting involves preparation of written material by the Planning Commissioner which is merely signed and submitted by the developer.)

Ms. Kathryn Donovan  
August 19, 1988  
Page 3

7. Whether a Planning Commissioner who has a financial interest in a development project may answer questions about the project at a meeting of the Development Review Committee. (The Development Review Committee reviews projects and makes recommendations to the Planning Commission.)
8. If the answer to number 7 is yes, are there any conditions or restrictions that apply.
9. Do the answers to any of the preceeding questions change if the Planning Commissioner is the sole owner of the project.

In all of the situations described above, it should be postulated that the Commissioner will not vote on any Planning Commission decisions in which the Commissioner has a financial interest nor will the Commissioner be counted for purposes of a quorum on the item. I appreciate the time and effort that it will take to respond to this request. If you need more factual information or if I can be of any assistance, please contact me immediately at (408) 354-6880.

Very truly yours,

  
MARY JO LEVINGER  
Town Attorney

MJL:ymf

cc: John R. Lien, Planning Commissioner  
Deborah Swartfager, Town Manager  
Lee Bowman, Planning Director



**TOWN of LOS GATOS**  
*Office of the Town Attorney*  
(408) 354-6880

REC-22 8-23-88

August 19, 1988

Ms. Kathryn Donovan  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

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Ms. Kathryn Donovan  
August 19, 1988  
Page 2

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Concerning Mr. Lien's practice involving development projects before the Planning Commission, please note that although in the specific factual instance presented Mr. Lien will be the sole owner of the project at the time of the next scheduled Planning Commission hearing on the application, advice is still requested on the facts without sole ownership to provide guidance for his future conduct.

I am requesting an advice letter from you that summarizes the remarks that you made on the following subjects:

1. Whether a Planning Commissioner who has a financial interest in a development project that is being considered for approval by the Planning Commission may answer questions about the project at a public meeting of the Planning Commission.
2. Whether a Planning Commissioner who has a financial interest in a development project may answer questions at a public meeting of the Planning Commission when the questions concern processing or evaluation of architectural drawings that the Commissioner has prepared for the project.
3. Whether a Planning Commissioner who has a financial interest in a development project may answer questions about the project at a public meeting of the Town Council.
4. Whether a Planning Commissioner who has a financial interest in a development project may answer questions about the project at a public meeting of the Town Council when the questions concern processing or evaluation of architectural drawings that the Commissioner has prepared for the project.
5. Whether a Planning Commissioner who has a financial interest in a development project may "ghostwrite" materials that are subsequently submitted by a developer for consideration by the Planning Commission. (Ghostwriting involves preparation of written material by the Planning Commissioner which is merely signed and submitted by the developer.)
6. Whether a Planning Commissioner who has a financial interest in a development project may "ghostwrite" materials that are subsequently submitted by a developer for consideration by the Town Council. (Ghostwriting involves preparation of written material by the Planning Commissioner which is merely signed and submitted by the developer.)

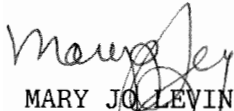


Ms. Kathryn Donovan  
August 19, 1988  
Page 3

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9. Do the answers to any of the preceeding questions change if the Planning Commissioner is the sole owner of the project.

In all of the situations described above, it should be postulated that the Commissioner will not vote on any Planning Commission decisions in which the Commissioner has a financial interest nor will the Commissioner be counted for purposes of a quorum on the item. I appreciate the time and effort that it will take to respond to this request. If you need more factual information or if I can be of any assistance, please contact me immediately at (408) 354-6880.

Very truly yours,

  
MARY JO LEVINGER  
Town Attorney

MJL:ymf

cc: John R. Lien, Planning Commissioner  
Deborah Swartfager, Town Manager  
Lee Bowman, Planning Director



# California Fair Political Practices Commission

August 23, 1988

Mary Jo Levinger  
Town Attorney  
P.O. Box 949  
Los Gatos, CA 95031

Re: 88-328

Dear Ms. Levinger:

Your letter requesting advice under the Political Reform Act was received on August 22, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Katherine E. Griffiths*  
for Diane M. Griffiths  
General Counsel

DMG:plh

cc: John R. Lien, Planning Commissioner

## Memorandum

M-88-329

To : ROBERT LEIDIGH  
Fair Political Practices Commission

Date : March 31, 1988

File No.:

Telephone: ATSS ( 8 ) 454-5466  
(916 ) 324-5466

N. EUGENE HILL  
Assistant Attorney General  
From : Office of the Attorney General—Sacramento

Subject : DISCLOSURE OF REAL PROPERTY INTERESTS

On March 23, 1988, you telephoned Ted Prim to ask several questions concerning disclosure of real property. The questions are addressed to the Attorney General's Office, because the Attorney General is the civil prosecutor for violations of the Political Reform Act committed by the members and staff of the Fair Political Practices Commission (FPPC). All of the questions concern disclosure obligations of commission employees on their upcoming statements of economic interest due on April 1, 1988.

#### Background

Section 87206(f) of the Government Code<sup>1/</sup> provides that a "filer" need not disclose any interest in real property which is a principal or solely personal residence. Section 82030(b)(8)(a) provides that a loan from a commercial lending institution made in the ordinary course of business without regard to the borrower's official status which is used to purchase, refinance or improve the principal residence of the filer also need not be disclosed. When a loan is disclosable, any security on the loan must be disclosed. (§ 87207(a)(5).) In the case of real estate, the FPPC form directs the filer to disclose the address of the security.

A literal application of these sections as implemented by the FPPC form would mean that no information concerning the residence would have to be disclosed on schedule (b) as an interest in real property. However, the address of the residence would have to be disclosed on schedule (E) as the security for a loan on a personal residence which does not act as the principal residence of the filer.

The questions set forth below focus on two issues:

First, under what circumstances is an undeveloped lot for a home under construction deemed to be the principal or personal

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1. All references hereinafter are to the Government Code.

residence of the filer? Second, is the address of a personal residence, other than the principal residence, required to be disclosed on the loan schedule, or does the exemption set forth in section 87206(f) implicitly exempt the address from disclosure on the loan schedule?

#### Initial Facts

A buyer purchased an undeveloped lot on which he intended to construct a structure which would become his principal residence. When he purchased the lot, the seller financed a portion of the purchase and a seller's carry back loan was created. Subsequently, a construction loan was acquired by the buyer, and the seller's carry back loan was paid off. Construction of the structure commenced and upon its completion, the construction loan was rolled over into a conventional mortgage. The buyer then occupied the home as his principal place of residence. At the commencement of these transactions, the buyer occupied a residence which he considered his principal residence. Pursuant to sections 87206(f) and 82030(b)(8)(a), the filer did not disclose either this original residence or his mortgage on his previously filed statements of economic interests. A few months prior to completion of the construction of his new residence, the filer sold his original residence and moved into an apartment pending completion of the construction.

#### Questions

1. Must the property be disclosed on schedule (b) (interest in real property) or may the property be considered a principal residence of the filer, thereby exempting it from disclosure?
2. Must the construction loan be disclosed or is it exempt from disclosure pursuant to section 82030(b)(8)(a) as a commercial loan utilized for the purpose of purchasing the filer's principal place of residence?
3. When the seller's carry back loan or any other loan which is used to purchase or construct the filer's personal residence is reported on the loan schedule, must the address of the property be reported or is it impliedly exempt under section 87206(f)?

Conclusions

1. Under the facts provided, the undeveloped property is not disclosable as an interest in real property pursuant to section 87206(f). This conclusion is based on the fact that the undeveloped lot was purchased for the express purpose of promptly constructing the filer's future principal or solely personal residence thereon, and both the construction and ultimate occupancy of the residence were accomplished in a reasonable period of time. In our view, the exemption set forth in section 87206(f) would not pertain to undeveloped property which is not promptly subject to the construction and occupancy of a personal residence thereon.
2. If the construction of the residence and its occupancy as the filer's principal residence is accomplished prior to the end of the period covered by the disclosure statement, the construction loan and subsequent mortgage would be loans for the purchase of the filer's principal place of residence within the meaning of section 82030(b)(8)(a). Therefore, such loans would be exempt from disclosure if they were made by a commercial lending institution in the ordinary course of business without regard to the borrower's official status.

If the construction and occupancy do not occur by the end of the period covered by the disclosure statement, the property may be viewed as a personal residence of the filer so long as construction and occupancy will occur promptly. In this event, the construction loan must be disclosed as a loan for the purchase of a personal residence which, as of the close of the period covered, is not the filer's principal place of residence. For information concerning disclosure of the address of the property, see the conclusion to Question No. 3 below.

3. Section 87206(f) specifically exempts solely personal residences from the disclosure requirements pertaining to an interest in real property. Notwithstanding this exemption for disclosure of the property, loans which are not exempt pursuant to section 82030(b)(8)(a) that are secured by such property must be disclosed. In promulgating its forms, the FPPC directs filers to disclose the address of any real property which secures a loan. Since section 87207(a)(5) only requires disclosure of the security and does not contain the specific address requirement set forth on the

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commission's form, we believe that disclosure of the address is not required in the case of security which is a solely personal residence exempt from disclosure pursuant to section 87206(f). By enacting section 87206(f), the Legislature determined that none of the information, including the address, pertaining to interest in real property need be disclosed in connection with a filer's solely personal residence. Applying standard rules of statutory construction which place emphasis on the plain meaning of statutory language and the harmonizing of statutory provisions, we do not think the requirement to disclose security for a loan, pursuant to section 87207(a)(5), was intended to repeal the privacy protection afforded by the exemption from disclosure of personal residences contained in section 87206(f). We think it is sufficient for the filer to indicate that the security for the loan is a personal residence, which is exempt from disclosure, pursuant to section 87206(f).

We might suggest that future forms promulgated by the FPP be amended to instruct filers that address information need not be included when the security for a loan is a solely personal residence.

#### Additional Facts

An individual purchased an undeveloped lot on which he intended to construct a personal residence, but not his principal place residence. During the reporting period, the land was purchased and construction was commenced. However, construction was not completed and, therefore, the property was never occupied as a residence during the reporting period.

#### Questions

4. May the property be considered a personal residence for the purposes of exempting the property from disclosure as an interest in real property pursuant to section 87206(f)?
5. Must the address of the property be disclosed on the loan schedule or is it impliedly exempt from disclosure pursuant to section 87206(f)?

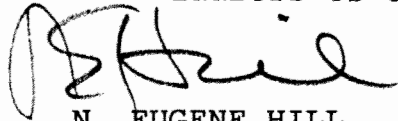
#### Conclusions

4. So long as construction and occupancy of the residence is completed promptly, the property may be considered to be

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personal residence of the filer and, therefore, exempt from disclosure as an interest in real property pursuant to section 87206(f). See conclusion No. 1 above.

5. Pursuant to the analysis of question 3 set forth above, address of the property need not be disclosed.



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